Quarterly Report

OF THE

ATTORNEY GENERAL

OF

ALABAMA

FOR THE PERIOD

FROM JANUARY 1, 1969

THROUGH MARCH 31, 1969

VOLUME 134

MacDONALD GALLION, Attorney General

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QUARTERLY REPORT

of the

ATTORNEY GENERAL

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For the Period

From January 1, 1969

Through March 31, 1969

TO THE STATE, COUNTY, AND MUNICIPAL OFFICERS OF ALABAMA:

This Quarterly Report of the Attorney General of Alabama, which includes all official opinions rendered by the Attorney General from January 1, 1969 through March 31, 1969, is published in compliance with the provisions of Title 55, Section 228, Code of Alabama 1940.

Under this section of the Code, I am required to send seven copies of this Quarterly Report to each judge of probate in the State, and the judge of probate, in turn, is required to deliver one copy each to the clerk of the circuit court, the sheriff, the tax collector, the tax assessor, the county superintendent of education, and the deputy or county solicitor of his county. This section also requires that I send a copy of this report to each circuit solicitor and the chief executive officer of each incorporated municipality in the State.

The office of the Attorney General is anxious to render prompt and efficient service to the State, county, and municipal officials. If you have any suggestions to make regarding the improvement of the service, I shall be glad to hear from you.

Sincerely,

MacDONALD GALLION
Attorney General

MacDONALD GALLION
Attorney General

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Executive Assistant

John G. Bookout
Deputy Attorney General

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Mrs. Mary Lee Stapp
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Arthur J. Reid

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Examiners of Accounts:
James W. Webb

Finance:
James T. Hardin

Agriculture and Industries:
George O. Miller

Mental Health:
Jamie L. Pettigrew

OPINIONS

January 3, 1969

Honorable Conrad M. Fowler
Judge of Probate, Shelby County
Courthouse
Columbiana, Alabama 35051

Licenses — Automobile Dealers — Used Car Lot.
The proviso contained in Title 51, Section 462, Code of Alabama 1940, Recompiled 1958, which recites that a licensed automobile dealer may maintain a used car lot for the sale of used or secondhand cars without the payment of an additional license, is limited in application to the city or town where the dealer has procured an automobile dealer's license for his regular place of business, and would not be applicable to a used car lot operated by the dealer in another city or town.

Opinion by Assistant Attorney General Burton.

Dear Sir:

Your request for an official opinion dated November 21, 1968, is as follows:

"The Sherman-Holland Ford, Inc., is operating in the City of Montevallo in Shelby County. The business is engaged in the sale of Ford automobiles and other Ford products. Annual licenses are purchased from this office each year under the provisions of Title 51, Section 462, Code of Alabama of 1940, as recompiled in 1958.

"Sherman-Holland Ford, Inc., operates a used car lot in the City of Alabaster, also in Shelby County, but 15 miles distant from Montevallo.

"I shall appreciate your advice as to whether or not Sherman-Holland Ford, Inc., is required to purchase additional licenses for the operation of the used car lot in Alabaster. May I refer you to the language of the last clause of the next to last sentence of said Section 462 wherein it reads as follows: '. . . ; provided, the licensed dealer may maintain a used car lot for the sale or use of secondhand cars without the payment of an additional license.'"

Your question, under the circumstances as related by you, is answered in the affirmative, and to the effect that said dealer would be required to purchase an automobile dealer's license under Section 462, supra, for its used car lot located in the City of Alabaster, where it is presumed that it is engaged in the business of selling used cars.

Title 51, Section 462, Code of Alabama 1940, Recompiled 1958, which levies the license on automobile dealers, is based on a graduated scale depending on the population of the particular city or town involved. If

the dealer maintains one or more different places of business in the same city or town, and if he has procured the license for his first place of business so located, he is required to pay a license of only one half of the amount paid therefor "for each additional place of business," located in the **same** city or town.

If an automobile dealer has paid the license tax as to his place of business where he sells cars in a city or town in this state, and he maintains another place of business where he sells cars in another city or town, he would be required to pay the full amount of the license tax in such second city or town or as to any other such place of business which he maintains in a different city or town. Section 462 clearly limits the proviso relating to an additional place of business to one which is located "in the **same** city or town." This is true regardless of whether or not the additional place of business located in a different city or town is located in the same county.

The proviso to which you refer, and which relates to a used car lot where "secondhand cars" are sold would also appear from a reading of the license tax statute as a whole to be related only to a license procured for a place of business located "in the **same** city or town," and to be so confined. This would appear to also be in keeping with the intent of the Legislature as manifested by the statute itself, as the amount of the license is to be determined on a graduated scale and in accordance with the population of the specific city or town where the business is located. Likewise, it appears that the provisos, including the proviso relating to a used car lot, are also to be so limited. Quarterly Report of the Attorney General, Volume 17, page 192.

The opinion reported in Quarterly Report of the Attorney General, Volume 17, page 192, was released in 1939, and construes, particularly, Subsection (b) of Schedule 12 of the License Tax Schedules, as amended by Act No. 370 of the 1939 Regular Session of the Alabama Legislature (General Acts of Alabama 1939, page 497). It also seems significant that both the proviso relating to an additional place of business and the proviso applying to a used car lot were contained in Subsection (b) of Schedule 12, as amended, supra.

The crux of said opinion is as follows:

> "In my opinion, Subsection (b) of Schedule 12, as amended, should be construed so as to read into said Subsection the words 'in the same city or town' so that such Subsection would read: " 'Provided, a person maintaining more than one place of business **in the same city or town** for the sale of automobiles, trucks or other self-propelled vehicles as above enumerated shall pay an additional license, etc.' "
>
> [Emphasis supplied.]

In bringing Schedule 12, as amended by Act No. 370, supra, forward in the Code of Alabama 1940 as Section 462 of Title 51, the Legislature

actually added the words "in the same city or town" to the proviso, thus adopting the construction of the statute as made by this office in the above-cited opinion.

Yours very truly,

MacDONALD GALLION
Attorney General

January 16, 1969

Bankhead, Petree & Savage
Attorneys at Law
201-206 Bankhead-Long Building
Jasper, Alabama 35501

Schools — County Boards of Education — City Boards of Education.

A child who does not live within a city school district may be charged a reasonable fee for attending a city school if the county board of education and the city board of education agree that he may attend the city school under Title 52, Section 61(5), Code of Alabama 1940, Recompiled 1958.

Opinion by Assistant Attorney General Madison.

Gentlemen:

I have your letter of January 9, 1969, as attorneys for the City Board of Education, in which you request my opinion on the following question:

> "Does a City Board of Education have the right to impose an attendance fee for those children residing out of the city school district who attend school within the city school district?"

The above has been considered and ruled on by this office in a number of cases. No child who lives within a district which is under the jurisdiction of a county board of education may attend a school which is under the jurisdiction of a city board of education unless the attendance is by the mutual agreement of both the county and city boards of education. Title 52, Section 61(5), Code of Alabama 1940, Recompiled 1958. This places an extra burden on city boards and reasonable charges for such attendance may be charged. See letters to: Honorable Thurman L. Gallman, City Superintendent of Education, Oneonta, Alabama, dated September 16, 1957; Honorable William B. Smith, Jr., Steele, Alabama, dated October 15, 1965; Mr. James C. Goodwin, Cullman, Alabama, dated August 7, 1967; and to Mr. James Shelnutt, Roanoke, Alabama, dated August 29, 1968.

Yours very truly,

MacDONALD GALLION
Attorney General

January 22, 1969

Honorable A. L. Nettles
Tax Collector, Monroe County
Monroeville, Alabama

Ad valorem Taxes — House Trailers.

House trailers are not subject to assessment for ad valorem taxes while they are a part of the stock of a dealer.

Opinion by Assistant Attorney General Livingston.

Dear Sir:

Your request for an opinion of this office, dated January 8, 1969, is as follows:

> "We have in Monroe County, several licensed dealers selling new mobile homes. They keep several new such mobile homes in stock, from which they make sales just as automobile dealers do.
>
> "It appears that they pay a sales tax on these vehicles when they sell them, just as automobile dealers do.
>
> "My question is, should they also pay ad valorem tax on such new vehicles kept in stock for sale? Some of these vehicles may not be in stock over a week while others remain longer before sale.
>
> "I know that after sale these items become personal property of the purchaser and are taxable as such, but I do not know of any provision for assessing ad valorem tax on the new ones kept in stock for sale by the licensed dealer.
>
> "Please advise me as to this at your earliest convenience, as this question has arisen in my County."

Your question is answered by the provisions of Act No. 44, Special Session 1961, Acts of Alabama 1961, page 1897. Section 4 of said Act provides as follows:

> "Section 4. After the thirtieth day of September, 1961, house trailers shall not be included in any assessment by any person, firm or corporation under the provisions of Section 21(d), Title 51, Code of Alabama 1940, and as of the first day of October, 1961, or any subsequent year, ad valorem taxation of house trailers shall be assessed and taxes collected solely as herein provided."

Section 21(d), Title 51, Code of Alabama 1940, referred to in Section 4 of Act No. 44, quoted above, deals with the assessment for ad valorem taxes of a dealer's stock of goods. Section 4, supra, is codified in Title 51, Section 704(3), Pocket Part, Code of Alabama 1940, Recompiled 1958.

See also Section 1 of Act No. 159, Special Session 1962, pages 203 and 204, now codified in Title 51, Section 704(1), Pocket Part, Code of Alabama 1940, Recompiled 1958.

Therefore, you are advised that house trailers are not subject to assessment for ad valorem taxes while they are a part of the stock of a dealer. To the same effect, see opinion of this office reported in Quarterly Report of Attorney General, Volume 113, page 67.

Very truly yours,

MacDONALD GALLION
Attorney General

January 30, 1969

Honorable Vernon N. Schmitt
City Attorney
City of Leeds
Jefferson County
Leeds, Alabama 35094

Municipalities — Public Utilities — Water.

1. The membership of a municipal water works board organized under Title 37, Chapter 7, Article 5, Code of Alabama 1940, is controlled by the certificate of incorporation of such board.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion dated December 23, 1968, is as follows:

"Mayor Jack Courson of our City has requested me, as the City Attorney, to ask for an Attorney General's opinion.

"The Water Works Board of the City of Leeds was incorporated May 14, 1943, under Title 37, Sections 394-402. A copy of the Articles of Incorporation are enclosed, in which you will notice the number of Board members was restricted to three and officials of the governing body were specifically precluded from serving as a member of the Board.

The Articles of Incorporation have not been amended to come under Title 37, Section 402 (15)-(27) nor amended otherwise since the initial incorporation.

"Title 37, Section 397, as amended would lead one to believe the governing body has the option to increase or decrease the size of the Board as well as permitting City Officials to serve on the

Board, however, the recent case of Buffalow vs. State (199 So. 2nd 672) 1967, seems to require the Articles of Incorporation to be amended as a condition precedent to City Officials serving on the Board. This case could be construed or extended to require the Articles of Incorporation to first be amended before the City Council could increase the number of Board members. The decision to amend vel non being at the discretion of the Board of Directors renders the governing body of the City ineffective to carry out the provisions of Title 37, Section 397, if the Articles must be amended.

"We would pose two questions:

"1. Whether or not a member of the City Council can serve on the Board of Directors of the municipal water works board when the Articles of Incorporation of said water works board specifically recite a prohibition against municipal officials serving on the board.

"2. Whether or not the governing body of the City has the right to increase the membership of the municipal water board from three to five when the Articles of Incorporation of the Water Works Board set the maximum and minimum number of board members at three.

"The City Council, in the near future, must make an appointment to the Board. For this reason the Mayor requests your opinion."

Paragraph 4 of the Certificate of Incorporation of the Water Works Board of the City of Leeds reads as follows:

"(4) The corporate power shall be exercised by a board of directors, which shall consist of three members, which shall be the maximum and minimum number thereof. The members of the board of directors shall be appointed or elected by the mayor and city council, or other governing body, of the City of Leeds, Alabama, and said members shall hold office concurrently with the mayor or other head of the governing body of said city.

None of the members of the said board of directors shall be an officer of said city. The members of the board of directors who shall be first chosen as such shall manage the affairs of the corporation until the first Monday in October in the year 1944 (which is the expiration date of the presently elected mayor of said city), or until their successors are chosen. All members of the board of directors shall serve without compensation, but they may be reimbursed for their actual expenses incurred in and about the performance of their duties as such."

Said Water Works Board was created under and is controlled by Title 37, Chapter 7, Article 5, Code of Alabama 1940, Recompiled 1958.

At the time of its incorporation Title 37, Section 397, Code of Alabama 1940, which controls the membership of the Board of Directors of this corporation, provided that such Board must consist of three members none of whom could be municipal officers. After the organization of the Water Works Board here considered, Section 397, supra, was amended by Act No. 113, Acts of Alabama 1956, page 439, which reads, in part, as follows:

> ". . .' — Each corporation formed under this article shall have a board of directors which shall constitute the governing body of the corporation, which board shall consist of three members. . . . Any officer of the municipality shall be eligible for appointment and may serve as a member of the board of directors but shall not receive a fee for his services; provided, however, that at no time shall the board consist of more than two officers of the municipality. The directors of the corporation shall be elected by the governing body of the municipality, and they shall be so elected that they shall hold office for staggered terms. The first term of office of one director shall be two years, of another director shall be four years, and of the third director shall be six years, as shall be designated at the time of their election, and thereafter the term of office of each director shall be six years. Provided, that with respect to corporations heretofore organized under this article their directors shall continue to hold office for the terms for which they were elected and at the expiration of such terms their successors shall be elected for staggered terms in accordance with the provisions of this section. Provided, further, that the governing body of any municipality which has heretofore or hereafter authorized the creation of a corporation as provided herein may, at its option, increase the board of directors from three to five members to serve according to all the conditions and terms set forth herein. In the event the governing body elects to increase such board of directors from three to five members, one member added to the board shall be appointed for a term of four years and the remaining member for a term of six years and thereafter the term of each such director shall be six years; provided, further, that at no time shall such board consist of more than three officers of the municipality.' "

Problems similar to those here considered were discussed by the Supreme Court of Alabama in the Case of **Buffalow v. State ex rel. Inabinett,** 281 Ala. 132, 199 So. 2d 672. The court considered the membership of a municipal utilities board which was originally organized under Article 5, supra, and which later amended its certificate of incorporation so as to be controlled by the statutes codified as Title 37, Chapter 7, Article 7, Code of Alabama 1940, as amended.

The board of directors considered in the **Buffalow** case, supra, was controlled by the certificate of incorporation and by Title 37, Section 402(17), Code of Alabama 1940, as amended at the time the court

rendered its decision. The court said that Section 402(17), supra, defined the outside limits of the authority of corporations controlled thereby and that such corporations are not required to exercise all of the authority permitted by the Legislature. The court therefore concluded that the membership of the Municipal Water Works and Sewer Board of the City of Florala was controlled by the provisions of its Certificate of Incorporation, as amended.

Since that portion of Section 397, as amended, supra, which is quoted herein, is almost identical to the provisions contained in Section 402(17), as said statute read at the time of the decision in the **Buffalow** case, supra, I am of the opinion that said case should here be construed to control the questions presented by your request.

Therefore, since the Certificate of Incorporation of the Water Works Board of the City of Leeds specifically prohibits an officer of said City from serving as a member of the Board of Directors, I am of the opinion that a member of the Council of said City may not serve as a member of said Board of Directors. I am further of the opinion that the City of Leeds may not increase the membership of said Board to five members unless the Certificate of Incorporation of the Board is amended to allow such increase.

Very truly yours,

MacDONALD GALLION
Attorney General

January 31, 1969

Honorable D. N. Hamilton
General Counsel
Alabama League of Municipalities
26 South Perry Street
Montgomery, Alabama 36104

Gasoline and Gasoline Tax — Municipalities — Taxes. 1. The portion of the Highway gasoline tax which is allocated to municipalities must be requisitioned for use within two (2) years after each monthly allocation is made.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion dated January 7, 1969, is as follows:

"I desire your official opinion on the following matter:

"In the 1967 Special Session of the Legislature there was enacted Act No. 224, a copy of which is enclosed for your con-

venience. I refer you to Section 5 (page 6) of the Act which provides that municipalities shall receive 10% of the amount of funds allocated to each county and divided on a population basis. This section further provides that before any distribution is made to a municipality the Highway Department must approve a plan of use of the monies so allocated, and the last sentence of this section reads as follows:

" 'Any funds allocated to a municipality by this act which shall not be requisitioned for withdrawal by such municipality pursuant to the provisions of this paragraph, within two years after allocation, shall thereupon be paid to the county in which such municipality is located.'

"It is our belief that the Legislature intended that the funds allocated to the municipalities should be used by them (with the approval of the Highway Department) on a first-in and first-out basis. It is my understanding that the Highway Department officials agree with this construction.

"Will you give your official opinion stating your interpretation of this section of the said act.

"I shall appreciate your attention and response."

The distribution of the funds to which your request refers is controlled by Act No. 224, Acts of Alabama 1967, page 295.

Such funds are allocated on or prior to the 10th day of each month with respect to the receipts of the tax by the State during the preceding month. See Section 4 of said Act No. 224.

As pointed out in your request, this statute provides that any funds allocated to a municipality which shall not be requisitioned for withdrawal within two (2) years after allocation shall be paid to the county in which the municipality is located. See Section 5 of said Act.

I am of the opinion that the construction placed by you on the portion of Act No. 224, supra, which is here considered is correct and that said statute evidences a legislative intent that the funds allocated to a municipality must be requisitioned on a first-in and first-out basis. Any funds not properly requisitioned for use by a municipality within two (2) years after the monthly allocation of such funds must be paid to the county in which the municipality is located. Any monthly allocation which has been made within a period of less than two (2) years prior to requisition may be withdrawn by the municipality if properly requisitioned in accordance with the provisions of Section 5 of Act No. 224, supra.

Very truly yours,

MacDONALD GALLION
Attorney General

February 4, 1969

Honorable James E. Ingram
Commissioner
4th District of St. Clair County
Pell City, Alabama

St. Clair County — Courts of County Commissioners.

Courts of County Commissioners do not have the authority to change boundary lines of Commissioners' Districts.

Opinion by Assistant Attorney General Hall.

Dear Sir:

Your request for an official opinion bearing date of January 27, 1969, is as follows:

> "The writer is a member of the Commissioners Court of St. Clair County, representing the Fourth District. I would like to request an official ruling on the following:
>
> "St. Clair County has 4 Districts, with a member from each District, and we would like to be advised whether or not the Commissioners Court has the authority to change the previous established Boundary lines by resolution or whether this change would have to be made by a Local Act of the Legislature."

The several counties in the State of Alabama are subdivisions of the State created by the Legislature.

Likewise, the boundaries of the Commissioners' Districts in the several counties were created by Acts of the Legislature. In the case of St. Clair County, I find that the boundary lines of the Districts were defined by an Act of the Legislature of 1865, Page 516.

By Act No. 214, Acts of 1959, Page 753, Section 2, it was provided that the "members of the Court of County Commissioners of St. Clair County shall be chosen by the qualified electors of the four Commissioners' Districts into which the County is now divided. . . ."

Therefore, it is my opinion that the Commissioners' Court does not have the authority to change the previously established boundary lines of the Districts by resolution, but that any such change would have to be made by an Act of the Legislature.

Very truly yours,

MacDONALD GALLION
Attorney General

February 5, 1969

Honorable J. P. Faulk, Jr.
Judge of Probate, Geneva County
Geneva County Courthouse
Geneva, Alabama 36340

National Guard — License Tags — Exemption.

1. Enlisted personnel of the Alabama National Guard who purchase distinctive National Guard motor vehicle license plates and later shall acquire by purchase, trade, exchange or otherwise a motor vehicle for which no standard plates have been issued during the current license year must pay the motor vehicle license tax due upon such vehicle in addition to the transfer fee.

2. A commissioned officer of the Alabama National Guard acquiring a distinctive National Guard license plate for his motor vehicle and who, at a later date, acquires by purchase, trade, exchange or otherwise a motor vehicle for which no standard license plate has been issued during the current license year may have his distinctive National Guard license plate transferred to this newly acquired motor vehicle only upon payment of the transfer fee.

Opinion by Assistant Attorney General Hart.

Dear Sir:

Your request for an official opinion under date of January 28, 1969 is as follows:

"We would like an opinion relating to Alabama National Guard Tags. If an individual buys his tags and then later in the year trades cars, can he transfer his guard tag for $.50 or is he required to pay the price of a tag if the car has never been tagged for the current year.

Thank you very much."

Title 36, Section 75(14), Code of Alabama 1940, as amended, states, in part, as follows:

"The distinctive license plates issued hereunder shall not be transferable as between motor vehicle owners and in the event the owner of a vehicle bearing such distinctive plates shall sell, trade, exchange or otherwise dispose of same such plates shall be retained by the owner to whom issued and by him returned to the judge of probate or license commissioner of the county who shall receive and account for same in the manner stated below. In the event such owner shall acquire by purchase, trade, exchange or otherwise a vehicle for which no

> standard plates have been issued during the current license year the judge of probate or license commissioner of the county shall, upon being furnished by the owner thereof proper certification of the acquisition of such vehicle **and the payment of the motor vehicle license tax due upon such vehicle,** authorize the transfer to said vehicle of the distinctive license plates previously purchased by such owner, which plates shall authorize the operation of said vehicle for the remainder of the then current license year . . . ." [Emphasis supplied.]

From the above-quoted section, it is my opinion that the enlisted personnel would be required to pay for the plates in the amount due under Title 51, Sections 693 and 705(1), Code of Alabama 1940, as amended.

Title 35, Section 101, Code of Alabama 1940, Recompiled 1958, states, in pertinent part, as follows:

> "Exemption from state toll bridge and tunnel fees, and automobile license fees. — . . . There shall be exempt from the operation of the privilege or license tax and registration fee now or hereafter to be levied on automobiles and motor vehicles within the state of Alabama, passenger vehicles owned and operated by the federal government or by officers and enlisted men actually serving in the United States army who are assigned by the war department as instructors or sergeant-instructors with the national guard of Alabama **and all commissioned officers of the active national guard of Alabama . . . .**" [Emphasis supplied.]

It is therefore my opinion that commissioned officers of the active National Guard of Alabama are entitled to a free license tag for each passenger vehicle which they own and operate, including station wagons and pickup trucks.

Yours very truly,

MacDONALD GALLION
Attorney General

February 17, 1969

Honorable Mabel S. Amos
Secretary of State
State Capitol
Montgomery, Alabama 36104

Uniform Commercial Code — Judges of Probate — Secretary of State.

1. An instrument recorded prior to passage of the Uniform Commercial Code may not be assigned by mere filing of an assignment in the Office of the Secretary of State.

2. Such assignment of an instrument recorded prior to the UCC must be accompanied by the recorded instrument or certified copy on file to effect proper notice filing under UCC, Sections 9-405 and 9-402.

Opinion by Assistant Attorneys General Hart, Loeb and Webb.

Dear Mrs. Amos:

I have your request of February 5, 1969 for an opinion, which is as follows:

> "The seal on the UCC-1 is of the Farmers Bank in Anniston and I assume Mrs. Mary H. Turpen is also connected with the bank.
>
> "The second sentence in the second paragraph of Miss Wright's letter refers to a previous matter when they sent us an amendment for filing and we had no financing statement in our files.
>
> The origiral filing was in the probate office. We told Miss Wright that we could not accept an amendment when there was no financing statement on file to which it referred."

Attached to your request is the following letter from Miss Mary E. Wright, Regional Counsel, U. S. Government, Small Business Administration, 908 South 20th Street, Birmingham, Alabama:

> "We are returning UCC 1 in the above case for filing in your office, together with Cashier's Check in the amount of $2.00.
>
> "You will notice that the original Mortgage is filed in Probate Court. When we first started transferring liens from the Probate Court to your records, you instructed us to use UCC 1 rather than UCC 3. It is our understanding that a Chattel Mortgage which is transferred from one lender to another lender, constituted 'Chattel Paper' and that such chattel paper is a proper document for UCC recording. The Debtor's signature will not appear on this type transfer inasmuch as it already appears on the original Mortgage to which reference is made in the face of the UCC 1.
>
> "Will you be so kind as to enter this upon your records for us."

The UCC form 1 attached to your request purports to be an assignment of collateral interest in a chattel mortgage previously recorded with the Probate Judge of Limestone County, Alabama. The form contains the signature of both the assignee and assignor but does not contain the signature of the debtor.

Section 9-405, Uniform Commercial Code, provides two types of filing for assignments. The first, obviously not applicable to the UCC form here presented, relates to assignments made at the time of the original instrument. Section 9-405(2) provides as follows:

"(2) A secured party may assign of record all or a part of his rights under a **financing statement** by the filing of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and the date of filing of the financing statement and the name and address of the assignee and containing a description of the collateral assigned.

A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the **filing officer** of such a separate statement, the filing officer shall mark such separate statement with the date and hour of the filing. He shall note the assignment on the index of the financing statement. The uniform fee for filing, indexing and furnishing filing data about such a separate statement of assignment shall be $1.00."
[Emphasis supplied.]

In my opinion such subsection contemplates notice filing of an assignment separate and apart from filing of the original instrument, with the filing officer having control of the original financing statement.

This requires in my opinion two important things, (a) an original financing statement filed under the UCC, and (b) presentation of said assignment to the filing officer with whom the original financing statement is on file. I am therefore of the opinion that the UCC form 1 presented does not meet the minimum standards for notice filing under Section 9-405.

You have further requested that I advise you how this instrument could be filed properly. I am of the opinion that the instrument could be accepted under Section 9-405(1), if attached to the original security agreement or a copy certified by the Probate Judge of Limestone County.

Yours very truly,

MacDONALD GALLION
Attorney General

February 19, 1969

Dr. Ernest Stone
State Superintendent of Education
State Office Building
Montgomery, Alabama 36104

Schools — State Board of Education — County Boards of Education.

In view of the provisions of Title 52, Sections 16, 17, 23, 87, 88, and 94, Code of Alabama 1940 (Recompiled 1958), the State Board of Education may authorize the establish-

ment of kindergarten programs in schools being operated by the County Boards of Education, provided such programs are financed wholly by Federal funds and no State or County funds are involved.

Opinion by Assistant Attorney General Hall.

Dear Dr. Stone:

Your request for an official opinion bearing date of February 4, 1969, is as follows:

> "Much attention is being given today to the matter of early childhood education. Most early childhood educators are of the professional opinion that the formal education of children should begin before the age of six years. Available federal funds would enable county and city school boards to establish some kindergarten programs. Though Section 162 of Title 52 gives city boards of education authority to establish kindergarten programs, there remains some doubt in regard to the legality of such a program in a county system, particularly in view of the restrictions of age contained in Section 298, Title 52, Code of Alabama 1940.
>
> "In view of this situation, we ask your opinion on the following questions:
>
> "(1) May the State Board of Education authorize the establishment of kindergarten programs in schools being operated by county boards of education, acting under the authority of Sections 16, 17, and 94 of Title 52, Code of Alabama 1940?
>
> "(2) May a county board of education establish a kindergarten program by authority of Sections 87 and 88 of Title 52, Code of Alabama 1940?
>
> "(3) Would the fact that such courses would be financed wholly from federal funds affect the legality of such action? "Since county school systems are already making plans for their next terms, particularly for summer terms, your early consideration of the above questions will be appreciated."

Title 52, Section 16, Code of Alabama 1940 (Recompiled 1958), provides as follows:

> "The state board of education shall prescribe rules and regulations for the grading and standardizing of public schools."

Title 52, Section 17, Code of Alabama 1940 (Recompiled 1958), reads as follows:

> "The state board of education, on the recommendation of the state superintendent of education, shall prescribe the minimum contents of courses of study for all public elementary and high schools in the state, and shall fix the maximum number of

> books which are compulsory in each grade of the elementary schools. In every elementary school in the state there shall be taught at least reading, spelling, handwriting, arithmetic, oral and written English, geography, history of the United States and Alabama, elementary science, hygiene and sanitation, physical training, and such other studies as may be prescribed by the state board of education. English shall be the only language employed in teaching in the first six grades of the elementary schools in the state."

Title 52, Section 94, Code of Alabama 1940 (Recompiled 1958), reads as follows:

> "The public schools of the county shall include elementary schools, that is, grades one to six, inclusive; junior high schools, that is, grades seven to nine, inclusive; and senior high schools, that is, grades ten to twelve, inclusive, **except as otherwise authorized by the state board of education.**" (Emphasis supplied.)

Title 52, Section 87, Code of Alabama 1940 (Recompiled 1958), reads as follows:

> "The county board of education shall prescribe, on the written recommendation of the county superintendent of education, courses of study for the schools under its jurisdiction, and a printed copy of these courses of study shall be supplied to every teacher and to every interested citizen of the county, **subject to the provisions of this title.**" (Emphasis supplied.)

Title 52, Section 88, Code of Alabama 1940 (Recompiled 1958), reads as follows:

> "The county board of education shall, upon the written recommendation of the county superintendent of education, grade and standardize all the schools under its jurisdiction, **subject to the provisions of this title.**" (Emphasis supplied.)

Although Title 52, Section 162, Code of Alabama 1940 (Recompiled 1958), gives City Boards of Education the power to establish and maintain a system of public schools, including kindergartens for children between five and eight years of age on such terms and conditions as the City Board of Education may prescribe, I find no similar provision specifically giving County Boards of Education like authority.

However, in view of the statement in your letter to the effect that available Federal funds would enable County and City School Boards to establish kindergarten programs, and your question as to whether the fact that such courses would be financed wholly from Federal funds would affect the legality of the establishment of such programs, your attention is invited to the provisions of Title 52, Section 23, Code of Alabama 1940 (Recompiled 1958), which provides as follows:

"The state board of education may accept for the state of Alabama any appropriation of money for the removal of illiteracy, the teaching of immigrants and for other educational purposes which may hereafter be made out of the federal treasury by any acts of congress; and the state board of education shall be constituted the chief educational authority for the expenditure and administration of any such funds. Said board may make rules and regulations for the expenditure of such funds, such expenditure to be in accordance with the terms of the acts of congress making such appropriations. The treasurer of the state is hereby designated as custodian for all funds received as apportionments under the provisions of such act or acts of congress."

The name "kindergarten," meaning literally, a "garden of children" was devised by Froebel, a German philosopher and educator, to apply to a system which he elaborated for the instruction of children of very tender years. "Children's garden" should be taken in its allegorical sense. The child is a plant, the school is a garden, and Froebel calls teachers "gardeners of children." His system guides the children's inclination for activity into organized movement, and invests the games, unknown to the child, with an ethical and educational value, teaching, besides physical exercises, the habits of discipline, self control and harmonious action and purpose, together with some definite lesson of fact. Words and Phrases, Volume 23, Page 549.

Work contemplated in a kindergarten is purely preliminary to, and entirely different in character from, the ordinary work of the common school. Words and Phrases, 1966-67 Cumulative Pocket Part, Volume 23, Page 258.

I am aware of the fact that Title 52, Section 298, Code of Alabama 1940 (Recompiled 1958), specifies the minimum age at which a child may enter public elementary schools at six years of age where the child becomes six years of age on or before October 1 of the school year or on or before February 1, in school systems having semiannual promotions of pupils. However, this provision applies only to **public elementary** schools, and, in my opinion, a kindergarten does not fall within the category of a public elementary school.

In view of the provisions of Title 52, Sections 16, 17, 23, 87, 88, and 94, Code of Alabama 1940 (Recompiled 1958), it is my opinion that the State Board of Education may authorize the establishment of kindergarten programs in schools being operated by County Boards of Education, provided such programs are financed wholly by Federal funds and no State or County funds are involved. None of the above is to be construed as indicating that a kindergarten is to be considered as a common school or public school. **Elsberry v. Seay,** 83 Ala. 614, 3 So. 804.

Very truly yours,

MacDONALD GALLION
Attorney General

February 20, 1969

Honorable Hoyt B. Hamilton
Judge of Probate
St. Clair County
Pell City, Alabama

Licenses — Warehouses

A boathouse or dry storage facility for boats is not a warehouse within the meaning of Section 616 of Title 51, Code of Alabama 1940, Recompiled 1958, and the operator thereof is not required to procure the warehouse for hire license.

Opinion by Assistant Attorney General Davis.

Dear Sir:

Your request for an official opinion under date of January 21, 1969, is as follows:

"Re: Pine Harbor Marina

Section 616 (warehouse for-hire license)

"A question has arisen as to whether the above captioned Marina should purchase a 'warehouse for-hire' license.

"The Pine Harbor Marina has a warehouse 100' x 80'. If you desire, the owner will store your boat for you and he charges a storage rate for doing so. A contract is signed for the storage at the time the boat is stored. In addition, the owner will sell to the owners of the boats, at retail prices, parts to repair a motor, or put in a new battery, etc.

"Under the above circumstances, please advise whether the owner-operator of the Pine Harbor Marina should buy a warehouse for-hire license under Section 616."

The basic question presented may be restated as follows: Is a structure designed and used exclusively for the storage of boats a warehouse within the meaning of Section 616, Title 51, Code of Alabama 1940, Recompiled 1958?

My answer to this question is in the negative.

The context of the word warehouse in the statute is "a warehouse . . . for the storage of goods, wares, or merchandise for hire." I note that an analogous situation exists, in that garages for the storage of motor vehicles are required to purchase a license under Section 467 of Title 51, supra, but, as a long standing policy of the Department of Revenue, such a garage is not considered to be a warehouse within the meaning of Section 616. Section 467 is contemporary in origin with Section 616. Thus, the context and the application of Section 616 seem to indicate that the Legislature did not have boathouses or structures in

the nature of dry storage facilities for boats in mind when the statute was enacted.

It is a general rule of statutory construction that where there is substantial doubt as to whether a person is included within the meaning of the statute, such doubt is to be resolved in favor of such person and against the taxing authority. **State v. Coastal Petroleum Co.,** 240 Ala. 254, 198 So. 610. Revenue laws imposing licenses or taxes are not to be extended by construction or implication beyond the clear import of the language used nor will they be enlarged so as to embrace matters on persons not specifically named or pointed out. See also **State v. Seals Piano Co.,** 209 Ala. 93, 95 So. 451; **U. S. v. Merriam,** 263 U.S. 179, 29 A.L.R. 1547.

The fact that a structure may be called a "warehouse" by its owner, or others, does not make it a warehouse within the meaning of Section 616, Title 51.

It is my opinion, therefore, that the structure described by you is not a warehouse within the meaning of Section 616, Title 51, and, considering the facts presented by you, the operator thereof is not liable for the warehouse for-hire license required under Section 616, Title 51, Code of Alabama 1940, Recompiled 1958.

Yours very truly,

MacDONALD GALLION
Attorney General

February 26, 1969

Honorable Robert B. Ingram
Director of Finance
State of Alabama
Montgomery, Alabama 36104

State Employees' Insurance Board — Circuit Judges.

1. Circuit Judges, who are otherwise qualified, are entitled to the insurance provided by Act No. 833, General Acts of Alabama 1965, page 1564, at the beginning of a new term, which commences after July 1, 1966; or, if it should be decided that Circuit Judges come within the purview of the last sentence of Amendment 92, Constitution of Alabama 1901, then the first Circuit Judge whose new term begins after July 1, 1966, would enable the remaining Circuit Judges, otherwise qualified, to receive the insurance authorized by Act No. 833, supra.

Opinion by Assistant Attorney General Bradley.

Dear Sir:

Your request for an opinion of this office bearing date of January 31, 1969 is as follows:

"Reference is made to an opinion of June 23, 1966, directed to Mrs. Dorothy S. Hitchcock and written by Mr. Robert P. Bradley, Assistant Attorney General.

"This opinion was written to clarify the eligibility of certain state officers and employees coming under state employees insurance as authorized by Act No. 833, General Acts of Alabama 1965, page 1564.

"Your attention is called to the first paragraph of page 7, which reads as follows:

" 'But, the Circuit Judges who receive their full and entire compensation from the State of Alabama with no part of their compensation contributed by the counties of their judicial circuit, would be eligible for the insurance under Act No. 833, supra, at the beginning of their new term commencing after July 1, 1966, the effective date of the insurance program authorized by said Act No. 833. This delay is necessary in view of the Constitutional prohibition against increasing or decreasing the compensation of an officer during the term of his office. Section 281, Constitution of Alabama 1901, and Amendment 93 thereof, and **Opinion of the Justices,** 249 Ala. 88, 30 So. 2d 14.'

"A question has arisen with some of the Circuit Judges in the State as to whether or not the State will pay for the state group insurance for them since they have had a recent salary raise.

Under Act No. 350 of the 1967 Regular Session, the Judges were increased from $12,000.00 per annum to $15,000.00 per annum.

"My question is, under the above circumstances, would the Circuit Judges be eligible to come under insurance as authorized under Act No. 833 since they have been given this increase in salary during their present term of office?"

As I understand your question, you are asking whether or not certain Circuit Judges in Alabama are entitled to receive the insurance provided by Act No. 833, General Acts of Alabama 1965, page 1564, where it does not appear that they have had a new term to begin since July 1, 1966.

As stated in my opinion to Mrs. Hitchcock on June 23, 1966, Circuit Judges who receive their full and entire compensation from the State, without contribution from the counties, would be entitled to the insurance authorized by Act No. 833, supra, beginning with a new term commencing after July 1, 1966.

Amendment 92 of the Constitution of Alabama 1901 provides that an elected or appointed State official's compensation shall not be increased or decreased during his term of office, but it also provides in the last sentence thereof that:

" * * * officers who are members of any court, board, commission, or similar body whose terms do not run concurrently, any increase or decrease in the salary, fees, or other compensation of the members of any such court, board, commission, or similar body shall become effective as to all such members thereof immediately after the expiration of the term or terms of office of the member or members whose terms first expire."

I would say then that a Circuit Judge would be eligible for the insurance at the start of a new term which begins after July 1, 1966; or, if it be decided that Circuit Judges come within the purview of the last sentence of Amendment 92, supra, the Circuit Judge's term first beginning after July 1, 1966, would govern the eligibility of the other Circuit Judges to receive the insurance provided by Act No. 833, supra, regardless of whether their term had expired or not.

I trust this answers your question.

Very truly yours,

MacDONALD GALLION
Attorney General

February 26, 1969

Honorable Ruben K. King, Commissioner
State Department of Pensions and Security
Administrative Building
64 North Union Street
Montgomery, Alabama 36104

Schools — Fees — State Superintendent of Education — Department of Pensions and Security

1. No public school pupil, once enrolled in school, can be denied his report card or diploma for failure to pay matriculation or other fees authorized by law.

2. Sections 142 and 176 of Title 52, Code of Alabama 1940 (Recompiled 1958), forbid the charging or collecting of any fees from children attending any of the first six grades of public schools.

3. The State Superintendent of Education is charged by law with the responsibility of explaining the intent and meaning of the school laws.

Opinion by Assistant Attorney General Hall.

Dear Sir:

Your request for an official opinion bearing date of February 13, 1969, is as follows:

"Recently a problem has come to my attention which has been discussed with the State Superintendent of Education. It relates to the practice of school officials' withholding grades from students who have not paid certain fees. In addition to withholding grades, apparently there are instances in some of the public schools in which children who were unable to pay school fees were not permitted to take examinations which were given to measure the pupils' attainment and were given a grade of 'I' (Incomplete) and were later 'automatically' given a grade of 'F' (Failing) to replace the 'I' (Incomplete), if the fees were not paid by a certain date.

"In one instance children who had not paid their school fees were called into the auditorium, were singled out from their classes and were told that they would not be able to take their tests until their school fees were paid. Later they were informed that they could take the tests but would not receive their report cards until the fees were paid.

"I understand that somewhat similar practices have existed in the first six grades as well as in Junior High Schools and in Senior High Schools. In Alabama there are many families who receive the State-Federal Aid to Dependent Children grants. At the present time the State is able to meet only a portion of the budgeted needs in these families. I would like to know what fees can legally be charged minor children in this State. Situations have been called to my attention which relate to ADC families in Alabama. The practice of withholding grades does not seem to me to be consistent with the compulsory school attendance laws.

"Under the present laws of the State is it legal or has your office rendered any opinion holding that it is legal to hold children responsible for such fees in the manner described above? In the event it is not legal to do this, I would appreciate your advice on how this can be corrected in instances where it comes to our attention in our work with children of this State."

In essence, you have asked this office what school fees are chargeable to minor children and if the children can be held responsible. You have further asked that in the event the child cannot be held responsible, what can be done to correct the situations in instances where it comes to your attention that children are held responsible.

In answer to your questions with reference to the legality of school fees charged in the public schools of Alabama and the withholding of grades from schoolchildren who do not pay those fees, I am aware of your special responsibilities in the Aid to Dependent Children Program and fields of services to neglected and dependent children as outlined in Title 49, Section 17(7), Code of Alabama 1940 (Recompiled 1958). However, it seems appropriate to observe at the outset that the laws

and this opinion are applicable to all schoolchildren in the public schools of Alabama.

In the case of **Deason v. Gray,** 189 Ala. 82, 66 So. 645, 646, the Court, in the course of its opinion, stated as follows:

> " . . . Education of man is essential to his highest usefulness, and the children of the poor are, on this account, the peculiar objects of the care of the state. It is the purpose of our lawmakers (so far as the financial condition of the state will permit it) to place within the reach of every child in the state an opportunity to obtain at least a rudimentary education, and school boards will not be permitted, under any pretense, to so exercise the discretion, which the law ex necessitate lodges in them, as to deny to any child of school age, who is within their jurisdiction, the privilege of attending his or her public school . . . "

I shall first deal with the question of holding children responsible for any fees which may be collectable. This office has held in Quarterly Report of Attorney General, Volume 102, pages 16 and 19, as follows:

> "Once a pupil has been allowed to attend, however, without payment of the matriculation fee, the fee becomes subject to collection by suit as a manner of enforcement . . .
>
> **"Once a pupil becomes enrolled in the school, he may** not thereafter in my opinion be denied his report card or diploma for the reason that the matriculation fee has not been paid." (Emphasis added.)

This office has further held that in instances where a fee was authorized to be collected that such fee should not operate to exclude from school any pupil subject to the compulsory school attendance period. Biennial Report of the Attorney General, 1926-28, page 152.

It is, therefore, the opinion of this office that even in instances where fees are authorized to be collected by statute, no child should be denied his report card or diploma for nonpayment. As previously held by this office the fee, where authorized by law, would become subject to collection by suit as a method of enforcement.

You have asked which fees are authorized by law to be collected. The statutory law of the State is quite clear with respect to children attending any of the first six grades. Title 52, Section 142, Code of Alabama 1940, as amended, provides:

> "No fees of any kind shall be collected from children attending any of the first six grades during the school term supported by public taxation."

Similarly, Section 176, supra, provides:

> "No fees of any kind shall be collected from children attending any of the first six grades of the city schools during the school term supported by public taxation."

Black's Law Dictionary (Fourth Edition, 1951) defines "collect" as meaning, "To gather together; to bring scattered things (assets, accounts, articles of property) into one mass or fund." It also defines "collection of illegal fees" as meaning, "Collection by public official of fees in excess of those fixed by law for certain services."

Webster's New Collegiate Dictionary (1961 Edition) defines "collect" as meaning, "To obtain, as contributions, from many persons," and, also, "To demand and obtain payment of."

It is absolutely illegal for any public school or any public school official in the State of Alabama to receive or collect any school fee, of any kind or nature whatsoever, from any child attending any of the first six grades during a school term supported by public taxation. Title 52, Sections 142 and 176, Code of Alabama 1940.

I am not aware of any statutory authorization for the collection of fees in any public junior or senior high school or public school in the State of Alabama from any pupil attending any public junior or senior high school during a term supported by public taxation, except the two (2) school fees expressly provided in Title 52, Section 437, Code of Alabama 1940, as amended, as follows:

(1) A reasonable matriculation fee.

(2) A reasonable fee for library, laboratory and shop work.

You have also asked what can be done to correct the situations in instances where it comes to your attention that children are held responsible for fees by withholding grades from them or by failing to promote them for failure to pay fees. I recommend that you call any situation you know of to the attention of the State Superintendent of Education who is charged by law to explain the intent and meaning of the school laws, and the rules and regulations of the State Board of Education, pursuant to Title 52, Section 44, Code of Alabama 1940, as amended.

Title 52, Section 47, Code of Alabama 1940, as amended, provides:

> **"Review of action of county and city boards.** — The state superintendent of education under rules and regulations promulgated by the state board of education, shall have the authority to review actions and orders of county and city boards of education and of county superintendents of education and city superintendents of schools in matters relating to finance and other matters seriously affecting the educational interest. Upon such review the state superintendent of education shall have the power to determine from the facts the just and proper disposition of the matter. The order of the state superintendent shall be binding."

It would appear, therefore, that the State Superintendent of Education is authorized by law to see that the law is properly carried out in the State.

Very truly yours,
MacDONALD GALLION
Attorney General

March 3, 1969

Honorable Woodie S. Napper
Superintendent of Education
Choctaw County
Butler, Alabama 36904

Schools — Teachers — County Board of Education — State Board of Education.

Whether teachers are allowed to accumulate sick leave while they are absent on sick leave is discretionary with the County Boards of Education, under such rules and regulations as may be promulgated by the State Board of Education, and is a matter for administrative determination.

Opinion by Assistant Attorney General Hall.

Dear Sir:

Your request for an official opinion bearing date of February 24, 1969, is as follows:

> "We are in the process of preparing a form for the teachers in the Choctaw County School System, which will reflect a month to month record of their sick leave days earned and used.
>
> "We are in doubt as to whether a teacher earns a sick leave day in any month, in the event she is absent for more than ten days or one-half any scholastic month."

You probably are aware of the provisions of Title 52, Section 136, Code of Alabama 1940 (Recompiled 1958), as amended by Act No. 90, Acts of 1963, 2nd Extra Session, Page 255, which reads as follows:

> "The county board of education shall have the authority, under such rules and regulations as may be promulgated from time to time by the state board of education to provide for the payment from public funds of teachers or other employees of the county board of education who are employed by the year for not over two weeks which said teacher or employee may be allowed by said board as a vacation, but such vacation must not be allowed during the time the schools are in session, and to provide leaves of absence during the time the schools are not in session for such teachers and employees on part or full pay when such

teacher or employee devotes such leave of absence to instructing in or attending schools for teacher training or in such manner as approved by the state board of education as beneficial to the educational work of the county; and to provide for the payment of any teachers, whether employed by the year or not, for absences during the time schools are in session where such absence results from sickness or some other unavoidable cause which prevents such teacher from discharging his duties; provided that pay for such absence caused by sickness shall not be allowed for a longer time than forty-five days during any one year and pay for such absences resulting from unavoidable causes other than sickness shall not be allowed for a longer time than one week during any one year, and the allowance of any such pay shall at all times be in the discretion of the county board of education."

You probably are also aware of the provisions of Title 52, Section 40(4), Code of Alabama 1940 (Recompiled 1958), which reads as follows:

"The state board of education is authorized and directed to reimburse each county and city board of education from the minimum program fund for payments to substitute teachers who replace teachers absent on sick leave during the time schools are in session and where the regular teacher is paid the contract salary while on sick leave in accordance with rules and regulations of the state board of education. Such reimbursement is to be made only on the basis of claims for reimbursement submitted annually on or before July 1 to the state board of education by county and city boards of education. County and city boards of education shall keep such records and submit such reports as may be required by the state board of education as necessary evidence to substantiate claims for such reimbursements.

"The state board of education is authorized to establish a sick leave plan for teachers employed in public elementary and high schools, define sick leave, determine rate of reimbursement for substitute teachers who serve in the place of teachers on sick leave, limit the number of days of sick leave per teacher for which reimbursements may be made and to make such other rules and regulations as may be necessary for the effective operation of this section.

"Nothing in this section shall be construed as repealing section 136 or 197 of Title 52, Code of Alabama 1940; provided that if the leave of absence which a teacher would receive under said statutes is more liberal than that provided under this section, said statutes shall remain in force for such purpose but not for the purpose of denying or limiting the benefits under this section."

You will note that Section 136, supra, permits the County Board of Education, under such rules and regulations as may be promulgated

from time to time by the State Board of Education to provide for the payment from public funds of teachers, whether employed by the year or not, for absences during the time that schools are in session where such absences result from sickness or some other unavoidable cause which prevents such teacher from discharging his duties, provided that pay for such absence caused by sickness shall not be allowed for a longer time than 45 days in any one year, and that the allowance of any such pay shall at all times be in the discretion of the County Board of Education.

You will also note from reading Section 40(4), supra, that the State Board of Education is authorized and directed to reimburse each County Board of Education from the minimum program fund for payments to substitute teachers who replace teachers absent on sick leave during the time schools are in session and where the regular teacher is paid the contract salary while on sick leave in accordance with rules and regulations of the State Board of Education, and that State Board of Education is authorized to establish a sick leave plan for teachers employed in public elementary and high schools, define sick leave, determine the rate of reimbursement for substitute teachers who serve in the place of sick teachers on leave, limit the number of days of sick leave of teachers for which reimbursement may be made and to make such other rules and regulations as may be necessary for the operation of this section. It also provides that nothing in this section shall be construed as repealing Sections 136 or 197 of Title 52, provided that if the leave of absence which a teacher would receive under said statutes is more liberal than that provided for under this section, said statutes shall remain in force for **such** purpose but not for the purpose of denying or limiting the benefits under this section. (Emphasis supplied.)

It seems that the primary purpose of Section 40(4), supra, is to provide for reimbursement to local boards of education for payments to substitute teachers teaching for teachers on sick leave.

Under Section 136, as amended, supra, the County Board of Education has authority, in its discretion, under rules promulgated by the State Board to pay for absences because of sickness of a teacher for a period no longer than forty-five days during any one year.

Consequently, even though a County Board of Education may, in its discretion, under rules promulgated by the State Board pay for absences because of sickness of a teacher for a period of no longer than forty-five days during any one year, reimbursement for money paid to a substitute teacher would still be governed by Section 40(4), supra.

Thus, where a teacher is absent on sick leave while still under contract, the County Board of Education may, in its discretion, under Section 136, as amended, supra, permit a teacher to earn a sick leave day in any month in which he or she is absent on sick leave, but the question of reimbursement for paying a substitute teacher is governed by the provisions of Section 40(4), supra. In this connection, you are referred to the official opinions contained in Biennial Report of Attorney General,

1934-36, Page 64; Quarterly Report of Attorney General, Volume 25, Page 164; and Quarterly Report of Attorney General, Volume 130, Page 47.

In other words, the matter of whether teachers are allowed to accumulate sick leave while they are absent on sick leave is a matter for administrative determination.

Very truly yours,

MacDONALD GALLION
Attorney General

March 5, 1969

Honorable A. W. Steineker, Jr., Chief Examiner
State Department of Eaminers of Public Accounts
608 Madison Avenue
Montgomery, Alabama

Colleges and Universities — Schools — Expenses.
Instructors and employees of state junior colleges, colleges and universities when traveling on state business are subject generally to provisions of Title 41, Section 154, Code of Alabama 1940, Recompiled 1958, as amended, although expenses are paid from federal funds or non-appropriated auxiliary funds such as athletic receipts.

Opinion by Assistant Attorney General Madison.

Dear Sir:

I have your letter of February 28, 1969, in which you request my opinion as follows:

> "I request your opinion as to whether instructors and employees of the various state junior colleges, colleges and universities, when traveling on the business of the state, are subject to the provisions of Title 41, Section 154, Code of Alabama Recompiled 1958, as amended (1967 Cumulative Pocket Parts), when the expenses for such travel are to be paid from federal funds or non-appropriated auxiliary funds such as athletic receipts.
>
> "In the event that your answer is in the affirmative, please advise me further if such ruling would, also, be applicable to the University of Alabama and Auburn University whose boards of trustees are established under the Constitution of Alabama 1901."

Title 41, Section 154, Code of Alabama 1940, Recompiled 1958, as amended, provides the following:

> **"Limitation of per diem expenses.** — The maximum amount allowable to a person traveling in the service of the state of Alabama or any of its agencies, institutions, boards, bureaus, or commissions for expenses other than actual expenses of traveling shall be fixed by the governor at not more than eleven dollars per day, such maximum or limit when fixed from time to time to be uniform in operation as to all persons while said persons are traveling within the state. Persons traveling in the service of the state or any of its agencies, institutions, boards, bureaus or commissions outside the state of Alabama shall be allowed all their actual and necessary expenses in addition to their actual expenses for transportation, provided such travel shall have first been duly authorized in writing by the governor; provided further, that persons traveling on official business for the state or any of its agencies, institutions, boards, bureaus, or commissions in privately owned vehicles shall receive ten cents per mile in lieu of their actual expense for transportation, provided, however, that the above per diem payment shall not be made for a period in excess of two consecutive months for an employee stationed at the same place in the state of Alabama and after the completion of two consecutive months' period the amount of the per diem shall be reduced to five dollars and fifty cents per day."

The above section controls the expense allowance of persons traveling in the service of the State, or any of its agencies unless there are acts relating to certain State agencies which effect a repeal of same insofar as those agencies are concerned, or make other provisions for the expense allowances in a different manner. Quarterly Report of Attorney General, Volume 16, page 7; Volume 32, page 45.

The term "traveling in the service of the State" is construed to mean travel by persons in carrying out their duties for the State. Quarterly Report of Attorney General, Volume 129, page 42.

The statute, Section 154, supra, does not deal with the **sources** from which the expenses are paid, but instead deals with the **amounts** to be allowable to persons traveling in the service of the State of Alabama as its agents, etc.

In an opinion of this office to Mr. Pitt Tyson Maner, Director, Civil Service Department, State of Alabama, dated February 1, 1957, with reference to a Survival Plan Study financed by federal funds, it was ruled as follows:

> "Even though personnel under the Survival Plan Study program are paid from federal funds, it is my opinion that they are traveling 'in the service of the state of Alabama' or one of its agencies, and are therefore limited to the travel allowance set forth in the Code section above noted." [Section 154, supra.]

Both Auburn University and the University of Alabama are institutions of the State and their boards of trustees are mere agents of

the State. **Cox v. Board of Trustees of the University of Alabama,** 161 Ala. 639; 49 So. 814; **Denson v. Alabama Polytechnic Institute,** 220 Ala. 433; 126 So. 133.

The instructors and employees of these two institutions when on traveling business for said institutions are persons traveling in the service of the State of Alabama or its agencies or institutions within the meaning of said Section 154, supra, and said Section is applicable and governs their travel allowance.

It results that both of your questions are answered in the affirmative.

I wish to point out, however, that your questions are general and embrace every junior college, college and university in Alabama. This opinion is, therefore, written on the assumption that no law or other legal reason exists for the inapplicability of Section 154, supra, to any one or more of them, and is limited to the facts as stated in your request.

Yours very truly,

MacDONALD GALLION
Attorney General

March 6, 1969

Honorable A. Frank Lee
Commissioner, Board of Corrections
Corrections Building
704 West Washington Avenue
Montgomery, Alabama 36104

Burial — Convicts — Corrections and Institutions, Department of — Prisons and Prisoners.

Expense of removal of body of prisoner, not legally executed, not paid from Board of Corrections funds.

Opinion by Assistant Attorney General Bridges.

Dear Mr. Lee:

Your request for an official opinion of February 14, 1969, is as follows:

> "It has been the practice of the Board of Corrections not to pay the expense of moving bodies of deceased prisoners to distant points. We have been furnishing a casket and a suit of clothes, and if the body is claimed all other expense is taken care of by the claimant. The policy for not paying this ex-

pense is based on Title 22, Section 177 of the Code of Alabama, Recompiled 1958.

"We have a case at hand now where the wife of a deceased prisoner incurred an expense of $65.00 for the removal of his body from Montgomery to Birmingham and is requesting payment.

"I would like your opinion as to whether this expense can be legally paid."

In addition to the information furnished in your inquiry, you have advised me that the deceased prisoner in question died in the hospital at Kilby Prison.

It is my opinion that your inquiry should be answered in the negative. You may not pay from the funds of the Board of Corrections the expense of removal of the body of this deceased prisoner from the prison to some other place for burial.

Section 177 of Title 2, Code of Alabama 1940, Recompiled 1958, is concerned with the distribution of bodies for scientific research and provides in pertinent part that no body or bodies shall be so distributed—

" . . . if any person shall satisfy the authorities in charge of said body or bodies that he or she is of any degree of kin, or is related by marriage to, or socially or otherwise connected with and interested in the deceased, and shall claim the said body or bodies for burial. In that event it or they shall be at once surrendered to such person for interment, or shall be buried at public expense at the request of such claimant, if a relative by blood or a connection by marriage, provided he or she is financially unable to supply such body or bodies with burial. . . . "

Section 177, supra, provides for burial at public expense under certain circumstances but said Section does not provide for removal of a deceased at public expense. Your policy for not paying for such removal under the provisions of this Section is a proper one.

To my knowledge there is no authority of law which will permit the State to defray the expense of removing the body of a convict not legally executed from Montgomery to Birmingham or any other distant point. See Quarterly Report of Attorney General, Volume 46, page 98; cf. Biennial Report of Attorney General 1926-28, page 247; and Title 15, Section 352, Code of Alabama 1940, Recompiled 1958.

Very truly yours,

MacDONALD GALLION
Attorney General

March 6, 1969

Honorable J. S. Pilkington
County Engineer
St. Clair County
Ashville, Alabama 35953

Counties — Planning and Zoning — Judges of Probate — Records.

1. The Court of County Commissioners or the Boards of Revenue of the Counties acting alone, may not set up reasonable standards and specifications for the sale and development of real estate subdivisions.

2. It is possible for Courts of County Commissioners or Boards of Revenue acting in conjunction with the officials of the municipalities located within the several counties to establish a regional planning commission pursuant to the provisions of Title 37, Sections 809-814, Code of Alabama 1940, Recompiled 1958.

Opinion by Assistant Attorney General Tyson.

Dear Sir:

Your recent request for an official opinion of this office is as follows:

"A question has arisen in the Court of County Commissioners of St. Clair County as to whether the County Commissioners Court with its broad regulatory powers can legally set up standards and specifications for the subdividing of lands for sale and development in the rural areas, by properly advertising and publishing said standards for the required length of time. These standards and specifications refer particularly to widths of right of way for the construction of roads by private developers that will eventually become a public road to be maintained by the County. These standards would be for the benefit of the buyers of said lands from the developer and for the safety on said county roads. This question referred to above is: Does the Court of County Commissioners or Board of Revenue have the legal authority to set up such standards to regulate the development of subdivisions?

"The second question pertaining to the above is: Does the Probate Judge, who is Chairman of the Court of County Commissioners, have the authority to regulate compliance with the above by refusing to record a subdivision that does not comply with the standards set up to regulate same by the Court of County Commissioners?"

The answer to your first question is in the negative, as at the present time there is no authority under State law for county governing

bodies acting alone to establish regulations setting forth the standards and specifications for the development and sale of real estate subdivisions for lands lying outside the corporate limits of the municipalities. In light of this, it is not necessary to answer your second inquiry.

It should be noted in passing, however, that the Court of County Commissioners or the Boards of Revenue of the several counties acting in conjunction with the proper officials of the several municipalities located within such counties may establish a regional planning commission provided such is done pursuant to the provisions of Title 34, Sections 809-814, Code of Alabama 1940, Recompiled 1958. In the event such was done, the Judge of Probate could lawfully refuse to accept such proposed map or plat for recording until such map or plat meets the approval of the municipalities involved. See Title 56, Section 15, Code of Alabama 1940, Recompiled 1958.

A copy of this opinion is being herewith forwarded to Honorable Hoyt B. Hamilton, Judge of Probate, Courthouse, Pell City, Alabama.

I trust this answers your inquiry.

Yours very truly,

MacDONALD GALLION
Attorney General

March 13, 1969

Mr. Emmett Sanders
Director, License Department
Madison County Court House
Huntsville, Alabama 35801

License Tags — Motor Vehicles — Trucks.

Based on the facts presented and under the provisions of Title 51, Section 697, Code of Alabama 1940, as amended by Act No. 580, General Acts 1967, page 1343 (1967 Cumulative Pocket Part), where a truck or truck tractor is acquired or brought into this state and operated during the first quarter of the license tax year, the quarterly declining basis for computing the amount of license tax due for the operation of such trucks or truck tractors is not applicable where an increase in the allowable gross weight is desired during a subsequent quarter of the license tax year resulting in a greater license tax than that already paid.

Opinion by Assistant Attorney General Livingston.

Dear Mr. Sanders:

Your request for an official opinion dated February 26, 1969, is as follows:

"Re: Title 51, Section 697, Code of Alabama 1940, as amended by Act No. 580 of the 1967 Regular Session.

"An official opinion is requested concerning the following matter.

"John Doe buys a 52P tag in October and then in February he voluntarily wants to increase the tag to a 62P

"Does he pay the difference between the 52P and the 62P tag based on the October prices for both tags?

"Example	62P Tag	$200.00	October Price
	52P Tag	$150.00	October Price
		$ 50.00	Difference

"Or, does he pay the difference, if any, based on the prorated rate of the 62P?

"Example	62P Tag	$150.00	February Price
	52P Tag	$150.00	October Price."

—0—

Title 51, Section 697, Code of Alabama 1940, as amended by Act No. 580, General Acts 1967, Page 1343 (1967 Cumulative Pocket Part) provides, in part, as follows:

"§ 697. Same; trucks or truck tractors.—(a) For each truck or truck tractor other than those subject to licenses under subsection (b) of this section, using the public highways of this state, the following license based on the gross vehicle weight in pounds shall pay the following licenses:

"For each truck or truck tractor plus the heaviest load to be carried having the following gross vehicle weight in pounds:

"Weight in Pounds:	Amount of License Tax
0 to 8000	$ 13.00
8001 to 12000	30.00
12001 to 18000	45.00
18001 to 30000	75.00
30001 to 42000	100.00
42001 to 52000	150.00
52001 to 62000	200.00
62001 over	250.00

* * * *

"(c) . . . After having obtained a license under this section with respect to any truck or truck tractor, the owner thereof may during the then current tax year voluntarily increase the allowable gross weight for which his vehicle is licensed by

making a new affidavit, applying for a new license applicable to the appropriate gross vehicle weight classification, surrendering the license plates or tags previously obtained, and paying the difference between the fees applicable to a license for the higher weight classification desired and the fee in respect of the license so surrendered . . .

"(d) Any truck or truck tractor, either new or used, that may be acquired or brought into this state during the first quarter of a tax year, or that may be operated in this state during such period, shall pay the full annual license tax or fee specified herein. Any truck or truck tractor that may be acquired or brought into this state in any subsequent quarter of the tax year (and that shall not theretofore have become subject to license hereunder by virtue of operation on the highways of this state in any then preceding quarter of the tax year) shall be licensed on a quarterly declining basis, and the amount of the license tax or fee shall be an amount equal to one fourth of the applicable license tax or fee multiplied by the number of quarter years intervening between the date such truck or truck tractor is acquired or brought into the state and the first day of the then succeeding tax year; . . . . "

It appears from the provisions of Subsection (d) above that the quarterly declining basis for computing the amount of license tax is applicable only to trucks or truck tractors, either new or used, that may be acquired or brought into this state during any quarter subsequent to the first quarter of a tax year.

From the facts stated in your letter, John Doe purchased a 52P tag for his truck in October by paying $150. He operated said truck throughout the first quarter of the license tax year and in February during the second quarter of the license tax year he voluntarily wants to increase the tax to a 62P.

Since the quarterly declining basis is not applicable to John Doe's truck, it is my opinion that the first example in your letter is the proper way to compute the amount of license tax due for the 62P tag; that is, $200 less credit for $150 already paid, the difference being $50 due. An interpretation in line with your second example would result in no additional tax due and in some cases would result in an overpayment with a possible refund being claimed depending on which quarter of the license tax year an increase in the allowable gross weight is desired. Such was not, in my opinion, the intent of the Legislature.

Although not covered in your request, it is deemed advisable to extend this opinion to a different set of facts. Suppose John Doe had acquired or brought his truck into this state during the month of February and said truck had never before become subject to the license tax under consideration. He applies for a 52P tag in February. This truck being eligible for a license on a quarterly declining basis under

Subsection (d) above, the amount of the license tax would be $112.50. During the month of May following, he voluntarily wants to increase the tag to a 62P. It is my opinion that the computation for the license tax due to obtain a 62P tag under these facts would be as follows:

62P Tag	$150.00	February price
52P Tag	$112.50	February price paid
	$37.50	Difference due

The same principle would apply if John Doe acquires or brings such truck into this state anytime during the third or fourth quarters of the license tax year.

Very truly yours,
MacDONALD GALLION
Attorney General

March 20, 1969

Honorable C. E. Avinger
Superintendent of Banks
Administrative Building
Montgomery, Alabama

Banks and Banking — Savings and Loan Associations.

State Chartered Savings and Loan Associations may, effective June 1, 1969, amend the individual association's bylaws and be able to designate accounts now classified as share accounts in the same manner as Federal Savings and Loan Associations operating in Alabama.

Opinion by Assistant Attorney General Clark.

Dear Mr. Avinger:

Your request for an official opinion, bearing date of February 20, 1969, is as follows:

> "Based upon the revision of the federal laws and rules and regulations of the Savings and Loan Insurance Corporation effective June 1, 1969, all federal associations, after the amendment of the individual association's bylaws, will be able to designate as deposit accounts any and all savings accounts now classified as share accounts. Under the provisions of Title 5, Sections 260—261 of the 1945 Legislature of Alabama state associations were granted all rights and privileges held by federal associations. Request is made that you issue a written opinion holding as follows:
>
> "1. That the issuance of the deposit forms in question is legal under state law and that state law permits the institution to raise capital in the form of savings deposits.

"2. That such savings deposits and any other savings accounts in the institution would, in the event of liquidation, dissolution or winding up, or in the event of any other situation in which the priority of such accounts is in controversy, have the same priority as ordinary general creditors of the institution.

"3. That (in the case of a mutual association) the savings deposits and savings accounts will share in any surplus on a pro rata basis after all other liquidation claims are paid.

"4. That the terms 'savings deposits' and 'savings accounts' under the laws of the state come within the definition of 'an insured account' as defined in the insurance of accounts regulations (the definition of 'insured account' is set out in Section 561.3 of the Insurance of Accounts Regulations, currently on page 6111, Insurance of Accounts Unit, Regulations Section, **Federal Guide**)."

Title 5, Section 229, Code of Alabama 1940, provides as follows:

"§ 229. Deposits and definite rate securities forbidden.—No association shall issue, sell, negotiate or advertise for sale, any certificates of indebtedness or receive deposits from the public. No association shall agree to pay a guaranteed rate of interest or fixed amount in dividends upon any accounts issued by it. (1939, p. 616.)"

In Quarterly Report of Attorney General, Vol. 128, page 60, a conflict between Sections 225 and 260-261 was resolved in the following manner:

"Act No. 120, General Acts 1945, page 113, approved June 16, 1945 (Title 5, Section 260, 261, Code of Alabama 1940, Recompiled 1958), provides as follows:

" 'Section 1. That any Savings and Loan Associations now or hereafter organized under the laws of this State is hereby empowered, on the authority of its Board of Directors, or a majority thereof, to enter into such contracts, incur such obligations, and generally to do and perform any and all such acts and things whatsoever as may be necessary or appropriate in order to take advantage of any and all memberships, loans, subscriptions, contracts, grants, rights, or privileges which may at any time be available or inure to Savings & Loan Associations or to their members, creditors, conservators, receivers, or liquidators by virtue of the provisions of any Federal statute which established the Federal Home Loan Bank or the Federal Savings & Loan Insurance Corporation and provided for the insurance of accounts of any Savings & Loan Association, or of any other provision of that or any other Act or resolution of Congress to aid, regulate, or safeguard Savings & Loan

Associations and its members including any amendments to the same or any substitutions therefor; also to subscribe for and acquire any stock, debentures, bonds, or other types of securities of the said Corporation and to comply with the lawful regulations and requirements from time to time issued by such Corporation.

" 'Section 2. That any Savings & Loan Association which is organized under and by virture of applicable statutes of the State of Alabama and operating under the laws of the State of Alabama may make any contract, loan, or investment which such Association could make were it incorporated and operating as a Federal Savings & Loan Association with its domicile in this State.

" 'Section 3. That all laws and parts of laws in conflict with the provisions of this Act are hereby expressly repealed.

" 'Section 4. That this Act shall take effect immediately upon its passage and approval by the Governor.

" 'Approved June 16, 1945.'

"If Section 225, supra, is to be strictly construed, it would prohibit the issuance of shares paying a differential or variable dividend.

"The legislative intent of Act No. 120, supra, was to give to the State laws governing savings and loan associations that degree of flexibility necessary to compete with like federal associations. And while it did not specifically repeal Section 225 at that time it is now apparent that a restriction of payment of dividends equally pro rata to the participation value of their respective accounts would nullify that flexibility.

"Where there is conflict in two acts the provisions of the later act govern. Quarterly Report of Attorney General Vol. 95, page 41."

The passage of time has almost done away with the distinction between a "deposit" and the issuance of "shares" for monies deposited in a savings and loan association.

As a Federal Savings and Loan Association would be permitted to avail itself of the rights and privileges set out in Federal Home Loan Board Resolution No. 22,506, dated January 9, 1969, the State Chartered Savings and Loan Associations may be permitted to do likewise under Act No. 120, supra.

In my opinion, the State Savings and Loan Associations may do each of the acts set out in Section 1 (a-d) of Federal Home Loan Board Resolution No. 22,506, and as set out in your request as questions one through four. My answer to each is in the affirmative.

Yours very truly,

MacDONALD GALLION
Attorney General

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